Hari Prakash Gulia Vs. State and Anr

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SooperKanoon Citation : sooperkanoon.com/1127

Court : Delhi

Decided On : Nov-25-2014

Judge : V.P.Vaish

Appellant : Hari Prakash Gulia

Respondent : State and Anr

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

11. h September, 2014 Date of Decision:25thNovember, 2014 % + CRL. M.C. 716/2014 HARI PRAKASH GULIA Through: ..... Petitioner Mr. A.K. Singh & Mr. Pramod Kumar, Advocates. versus STATE & ANR. Through: .....Respondents Mr. Yogesh Verma, APP for the State. Mr. P.K. Malik, Advocate for R-2. CORAM: HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT
1 The present petition has been preferred by the petitioner under Section 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.) against order dated 25.09.2013 passed by learned Additional Sessions Judge-03 (Central), Delhi whereby the revision petition was dismissed.

2. The brief facts leading to the present petition are that respondent No.2 filed a complaint on the allegations, inter alia, that he is running business of selling lottery ticket on partnership basis at Stall No.1, U.P. Roadways Bus Stand, Ajmeri Gate,

Delhi 110006 for the last more than 15 years. The said stall was allotted by Municipal Corporation of Delhi (MCD). The petitioner and constable Vijay Kumar are in the habit of collecting illegal gratification from the complainant and other shopkeepers. In the month of January 1994 the petitioner and other co-accused directed the complainant to increase the monthly from Rs.500/- (Rupees Five hundred) to Rs.1000/(Rupees One thousand) but the complainant refused to do so. On his refusal, on 20.01.1994 at about 9:00 a.m. the accused persons forcibly entered the complainants stall and dragged the complainant and his brother Ajit Kumar to Kamla Market police station. In the meanwhile, they also confiscated all the lottery tickets lying in the complainants stall. The complainant and his brother were then produced before the concerned SHO, who directed the police official to put them behind bars. After repeated request respondent/ complainant was permitted by the petitioner to bring Rs.1,000/- (Rupees One thousand) which they were demanding while his brother remained in custody. Respondent No.2 lodged a complaint with the PCR which was recorded by one constable Urmila who issued complaint No.3697. Thereafter, respondent No.2 went to the police station and on reaching there the petitioner in a fit of anger verbally abused and physically assaulted respondent No.2 with slaps & fists. He then falsely implicated respondent No.2 in fake and sham case under Section 100 of Delhi Police Act (hereinafter referred to as DP Act).

3. Thereafter, respondent No.2 was admitted to bail and his brother was released from P.S. Kamla Market, Delhi. After his release, respondent No.2 moved an application for discharge of lottery tickets which were in possession of the accused persons. On 22.01.1994 at about 6:10 p.m. the tickets were released On receipt of the said lottery tickets, respondent No.2 found that the prize winning tickets of value of about Rs.23,592/- were missing. Consequently, respondent No.2 filed a complaint for the offences under Sections 167/200/340/357/403/406/409/323/506/34 IPC.

4. Vide order dated 18.02.2013 learned trial court after hearing arguments on charge found prima facie case for framing of charge under Sections 340/323/357/506/34 (part I) IPC. However, the accused persons were discharged for the offence under Sections 403/406/409/167/200 IPC. Against the said order,

the petitioner and constable Respondent Vijay No.2/ Kumar filed complainant criminal also revision filed No.10/2013. criminal revision No.57/2013. After hearing arguments from both the parties, learned Additional Sessions Judge-03 (Central), Delhi dismissed both the revision petitions vide impugned order dated 25.09.2013.

5. Feeling aggrieved by the said impugned order, the petitioner has preferred the present petition.

6. Learned counsel for the petitioner contended that the respondent No.2 has lodged a false and frivolous complaint against the police officials including the petitioner. He pointed out that learned trial court has relied upon document marked as H, which is not admissible in evidence as the same is an un-exhibited document. Learned counsel for the petitioner also submits that the complainant was arrested by the petitioner in discharge of his official duties and a mandatory sanction under Section 140 of DP Act from the administrator was not obtained.

7. Another submission of learned counsel for the petitioner is that respondent No.2/ complainant filed Crl. M.C. No.1449/2004, which was disposed of by this Court on 16.05.2011 with the observations that the complainant lodged complaint on account of the motive to settle the score with the police officials, who had registered a kalandra against him.

8. Per contra, learned counsel for respondent No.2/ complainant urged that the applicant had sent notice under Section 140 of DP Act but the same was neither replied nor was the sanction declined. He also submits that respondent No.2 filed a suit for permanent injunction against the erring officials and the same is subjudice before trial court. He further submits that brother of applicant made a complaint to the police on 02.06.1994.

9. Learned counsel for respondent No.2 also submits that no sanction under Section 140 of DP Act is required as the act done by the petitioner was not in discharge of his official duty. He also pointed out that the applicant had moved an application under Section 140 DP Act read with Section 197 of Cr.P.C., which was dismissed by learned trial court vide order dated 17.10.2000. Thereafter, the applicant also filed a revision petition bearing CR No.84/03 against the said order,

which was also dismissed by learned Additional Sessions Judge, Tis Hazari Courts, Delhi on 10.02.2004.

10. I have given my thoughtful consideration to the submissions made by learned counsel for the parties and the material placed on record.

11. It is a settled rule of law that this Court would interfere only when it is satisfied that non-quashing of charges would amount to abuse of process of court or that interest of justice otherwise calls for quashing for charges. The scope of Section 397 and 482 of Cr.P.C. was considered by the Apex Court in Amit Kapoor vs. Ramesh Chander and Anr., (2012) 9 SCC460 it was held as under:

20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression prevent abuse of process of any court or otherwise to secure the ends of justice, the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim quando lex aliquid alicui concedit, concedere videtur id sine qua res ipsa esse non potest i.e. when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The section confers very wide power on the Court to do justice and to ensure that the process of the court is not permitted to be abused.

12. Further the Honble Supreme Court of India in Dhanalakshmi v. R. Prasanna Kumar, (1990) Supp. SCC686 observed as under:

Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any

offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/ offences are disclosed, and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. The High Court without proper application of the principles that have been laid down by this Court in Sharda Prasad Sinha v. State of Bihar, S. Trilok Singh v. Satya Deo Tripathi and Municipal Corpn. of Delhi v. Purshotam Dass Jhunjunwala proceeded to analyse the case of the complainant in the light of all the probabilities in order to determine whether a conviction would be sustainable and on such premises arrived at a conclusion that the proceedings are to be quashed against all the respondents. The High Court was clearly in error in assessing the material before it and concluding that the complaint cannot be proceeded with. We find that there are specific allegations in the complaint disclosing the ingredients of the offence taken cognizance of. It is for the complainant to substantiate the allegations by evidence at a later stage. In the absence of circumstances to hold prima facie that the complaint is frivolous when the complaint does disclose the commission of an offence there is no justification for the High Court to interfere.

13. In view of the aforesaid judgment of the Honble Supreme Court, it is evident that unless this Court feels that the inherent jurisdiction is to be exercised in a particular case to correct the mistake committed by the revisional court while acting under Section 482 of Cr.P.C. and that too after learned Additional Sessions Judge had declined to interfere in the matter, this court cannot enter the arena of appreciation of evidence.

14. It is beyond any cavil that at the stage of framing of charge, the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, are taken at their face value, disclose the

existence of all the ingredients constituting the alleged offence. At that stage if there appears a strong suspicion of guilt of the accused, the Court is not required to enter into meticulous examination of the evidence and material placed before it. The Court is not expected to dig into probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not that a ground for convicting the accused has been made out. If there is strong suspicion which leaves Court to think that there is a ground for presuming that the accused has committed an offence, then it is not open to the Court to see that there is no sufficient ground for proceeding against the accused.

15. In the present case, learned trial court after consideration of oral and documentary evidence formed an opinion that a prima facie case for the offence under Sections 340/323/357/506 (part I) IPC is made out.

16. As regards, sanction under Section 140 of DP Act and Section 197 of Cr.P.C. it may be mentioned that the applicant moved an application under Section 140 of DP Act and Section 197 of Cr.P.C., which was dismissed by learned trial court on 17.10.2014. The petitioner challenged the said order by filing criminal revision No.84/2003. Vide order dated 10.02.2004 learned Additional Sessions Judge dismissed the said criminal revision thereby observing that the question of sanction is left open to be decided in the main judgment and it may be delivered upon conclusion of the final case. The said order was not challenged by the petitioner and has become final. However, it would be open to the petitioner to urge the said plea during the course of trial.

17. Considering the above legal proposition, it may be said that once a prima facie case is made out the Court cannot delve into the merits of the case. There is no illegality or infirmity in the impugned order dated 25.09.2013 passed by learned Additional Sessions Judge.

18. In view of the aforesaid observations, the present petition deserves to be dismissed and the same is hereby dismissed. (VED PRAKASH VAISH) JUDGE NOVEMBER25h, 2014 hs